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MICHAEL RODAK, JR

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-459

GRACE SLOAN, as State Treasurer of the Commonwealth of Pennsylvania,

—and—

JOSE DIAZ and ENILDA DIAZ, *his wife* WILLIAM ZIMMERSPITZ and NANCY ZIMMERSPITZ, his wife, F. CARL KRETZMANN and KATHERYN L. KRETZMANN, his wife, ARTHUR HARVEY and MURIEL HARVEY, his wife, DANIEL F. X. POWELL and ANNA T. POWELL, his wife, SETH W. WATSON, JR., and ANNE P. WATSON, his wife, and HENRY E. CROUTER, *Appellants,*

v.

ALTON J. LEMON, NEAL F. BRACKEN, and BENJAMIN S. LOWENSTEIN, *Appellees.*

On Appeal from the United States District Court for the Eastern District of Pennsylvania

REPLY BRIEF OF APPELLANT GRACE SLOAN, AS STATE TREASURER OF THE COMMONWEALTH OF PENNSYLVANIA

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ARGUMENT

The Motion to Dismiss or Affirm, presented by the Appellees herein, takes the position that the decision of the Supreme Court in *Wolman* v. *Essex,* 342 F.Supp. 399 (E.D. Ohio), *aff'd.,* — U.S. — (1972), — U.S. Law Week —, (1972), removed from the instant case any possibility that it presents a substantial federal question.

The Commonwealth of Pennsylvania is of the view that *Wolman* v. *Essex* cannot be regarded as here controlling.

We have been seriously endeavoring to find a constitutional means for relief of the problem presented by the fact that one-fifth of our school population attends nonpublic schools pursuant to our compulsory attendance laws. This Court has expressed itself on Establishment Clause issues relating to public aid to nonpublic education only in *Everson* v. *Board of Education,* 330 U.S. 1 (1947), *Board of Education* v. *Allen,* 392 U.S. 236 (1968), *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971), and *Tilton* v. *Richardson,* 403 U.S. 672 (1971). Its affirmance in *Wolman* v. *Essex* leaves the Commonwealth of Pennsylvania without guidelines as to the constitutional law pertaining to aid to nonpublic (including sectarian) education.

The Pennsylvania statute, herein challenged, is significantly different from the Ohio statute struck down in *Essex.* Further, constitutional issues are raised in the instant case which were not before the court in *Essex.*

The Commonwealth renews its plea that the Court hear argument in this case, and, in an opinion thereafter, afford the several states the benefit of the Court's teaching on the extremely serious issues presented.

Respectfully submitted,

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